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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/654,571	09/01/2000	Christopher Morgan Rowden	ELAND.0001	6908
20987	7590	12/28/2005	EXAMINER	
VOLENTINE FRANCOS, & WHITT PLLC			VO, CLIFF N	
ONE FREEDOM SQUARE			ART UNIT	PAPER NUMBER
11951 FREEDOM DRIVE SUITE 1260			2676	
RESTON, VA 20190				

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/654,571	ROWDEN, CHRISTOPHER MORGAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	CLIFF N. VO	2676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 July 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16 and 18-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

1. This Office action is in response to the Amendment filed July 11, 2005 which has been entered into the record of file.

### ***Claim Rejections - 35 USC § 101***

2. Claims 1-16 and 18-20 are rejected under 35 U.S.C. 101 because they simply recite a process for producing a landscape plan for a property which comprises steps which are not executed by a computer system. Accordingly, the claimed invention is directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9-11 and 15-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Doerr (U.S. Patent No. 5,575,107).

As per independent claim 9, Doerr teaches a method for planning a landscape utilizing color coded, i.e., symbol, for a plurality of plants to be located in the landscape (col.1, lines 8-17) comprising a step of defining a set of generic plant categories according to at least one of the following plant characteristics: plant height, plant diameter, leaf texture and whether a plant is deciduous or evergreen (col.2, lines 58-67; col.3, lines 53-59, i.e., the height potential corresponds to the plant height), a step of assigning a symbol to each generic plant category (Fig.4D, col.3, lines 53-59, i.e., "color

coded") and a step of producing the landscape plan, by indicating via the symbols, locations for plants on the property (col.3, line 66 through col.4, line 5, i.e., identify the appropriate locations for each plant correspond to the landscape).

As per dependent claim 10, Doerr further teaches wherein the generic plant categories are defined according to at least one of a plant height and a plant width (col.2, lines 58-67 and col.3, line 53-59).

As per dependent claim 11, Doerr further teaches wherein the generic plant categories are defined according to a leaf texture (col.4, lines 2-5).

As per dependent claim 15, Doerr further teaches wherein the landscape plan includes a legend identifying each symbol (col.3, lines 62-65).

As per dependent claim 16, Doerr further teaches a step of providing a list of specific plants belonging to each generic plant category (col.2, lines 51-57).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-16 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLIFF N. VO whose telephone number is 571-272-7651. The examiner can normally be reached on 2nd Monday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MATTHEW BELLA can be reached on 571-272-7778. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLIFF N VO  
Examiner  
Art Unit 2676

C✓

*Matthew C. Bella*

MATTHEW C. BELLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600